

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT GARRETT,

Petitioner,

Case No. 07-13038

Honorable Patrick J. Duggan

v.

SHIRLEE HARRY,

Respondent.

**ORDER DENYING PETITIONER'S REQUEST FOR A
CERTIFICATE OF APPEALABILITY AND GRANTING PETITIONER'S
MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District of
Michigan on May 27, 2008.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

On July 20, 2007, Petitioner filed a *pro se* application for writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging that he is incarcerated in violation of his constitutional rights. Respondent thereafter filed a motion for summary judgment, seeking dismissal of the petition for failure to comply with the one-year statute of limitations applicable to federal habeas actions. In an opinion and order issued on April 24, 2008, this Court agreed that the applicable statute of limitations precludes habeas review of Petitioner's application and, therefore, dismissed the habeas petition with prejudice. Seeking to appeal the Court's decision, Petitioner filed a request for a certificate of appealability and a motion for leave to proceed on appeal *in forma pauperis*

on May 15, 2008.

A certificate of appealability must issue before Petitioner may appeal the Court's decision. 28 U.S.C. § 2253(c)(1)(a); FED. R. APP. P. 22(b). When a district court denies a habeas petition on the merits, a certificate may issue if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000). However, when a district court denies habeas relief on procedural grounds without reaching the petitioner's constitutional claims, a certificate may issue if the petitioner shows that jurists of reason would find it debatable whether (1) the petition states a valid claim of a denial of a constitutional right; *and* (2) the district court was correct in its procedural ruling. *Id.* at 484-85, 120 S. Ct. at 1604.

In this case, the Court denied Petitioner habeas claim on procedural grounds. As explained in the Court's order, Petitioner's habeas petition is barred by the one-year statute of limitations applicable to federal habeas actions. *See* 28 U.S.C. § 2244(d). Petitioner fails to establish that this procedural ruling was incorrect. The Court therefore holds that he is not entitled to a certificate of appealability.

Regarding Petitioner's request to proceed *in forma pauperis*, the pertinent inquiry is whether the appeal is taken in good faith. 28 U.S.C. § 1915(a)(3). The Court finds that Petitioner's appeal is taken in good faith and therefore grants his motion to proceed *in forma pauperis* on appeal.

SO ORDERED.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

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